

DEPARTMENT OF TRANSPORTATION
Research and Special Programs Administration
Compliance Policy for Year 2000 (Y2K) Problems

AGENCY: Research and Special Programs Administration (RSPA); U.S. Department of Transportation (DOT).

ACTION: Notice; compliance policy.

SUMMARY: RSPA has developed safety standards, procedures and reporting requirements, found at 49 CFR Parts 190, 191, 192, 193, 194, 195 and 199, for ensuring the safe operation of pipeline facilities. Civil enforcement action (civil penalty or compliance order) can be taken for violations of pipeline safety regulations. RSPA can also issue a corrective action order if it determines a pipeline facility poses a hazard to life, property, or the environment. RSPA can also seek injunctive relief.

We do not intend to pursue applicable pipeline safety compliance actions for regulatory violations or for environmental or safety problems caused by tests that are specifically designed to identify and eliminate Year 2000-related malfunctions. For example, we would not pursue any compliance actions should an over-pressurization, hazardous liquid or natural gas release, fire, or explosion occur as a result of component failure during Year 2000 testing, as long as no

substantial environmental damage or serious harm results and the failure is promptly corrected.

The proposed stays of compliance actions are limited to testing-related problems disclosed to RSPA by February 1, 2000, if certain criteria have been met, such as ensuring that the tests are designed to protect human health and the environment, ensuring that the tests are conducted well in advance of the Year 2000 critical dates, and ensuring that all testing-related problems are immediately corrected. If a testing-related problem does occur, testing plans should be available to document that these criteria have been met.

We will pursue enforcement action or other applicable compliance action against companies that do not prepare for potential Year 2000 problems and thereby endanger the public and the environment. Such actions will include assessing maximum civil penalties for any pipeline safety regulatory violation. Failure to identify and correct Year 2000 problems before 2000 could result in serious safety problems, such as unexpected shutdowns or other safety and operational malfunctions. The federal pipeline safety regulations require companies to prepare for and address any adverse or abnormal operations on its pipeline system, including those associated with Year 2000 issues. Every company must ensure Year 2000 readiness of its system through testing, repair, and contingency planning.

The millennium date change is near and substantial progress in assessing and remediating Year 2000 non-compliant computer code and hardware should already have occurred. Therefore, we are encouraging companies to focus on preparing business continuity and contingency plans.

These plans need to ensure that the impact of any Year 2000 failure is minimized and that

appropriate and adequate preparations are in place to ensure continuous, safe service to customers.

ADDRESSES: This document can be viewed on the Office of Pipeline Safety (OPS) home page at: <http://ops.dot.gov>.

FOR FURTHER INFORMATION CONTACT: Roger Little, (202) 366-4569.

SUPPLEMENTARY INFORMATION:

Background

The Year 2000 issue arises because a number of computerized functions require recognition of a specific year, day, and time, but many computers and computerized equipment recognize only the last two digits of a year's date (e.g., 1998 is 98; 2000 is 00). Therefore, when the calendar changes to the year 2000, computers and equipment with embedded computer chips may have difficulty interpreting the correct date. They may interpret the year to be 1900 or some other year. As a result, some computers and equipment containing embedded computer chips could become permanently unable to function properly. Others may continue to operate, but erroneously, while others simply may stop and need to be restarted. Some may create data that look correct, but in reality contain errors, and some may continue to operate correctly. In addition, some computer-related systems may have trouble functioning properly on other dates

such as a leap year, and on September 9, 1999 , where the date string 9-9-99 was commonly used as an end-of-operation command or for other purposes than for representing the date. Our policy to stay compliance actions encompasses any facility or computer-related testing problems that may arise as a result of the generally recognized suspect dates associated with Year 2000 non-compliance. We are referring to all of these dates as Year 2000 problems for purposes of this compliance policy.

Emphasis on Testing

The public expects compliance with the nation's environmental and safety laws. The regulated pipeline community must take all steps necessary to anticipate and resolve potential environmental and safety compliance problems that may result from Year 2000-related equipment problems. In an effort to ensure timely compliance, RSPA adopts this compliance policy to encourage any necessary testing of computer systems and their related pipeline facilities (e.g., Supervisory Control and Data Acquisition systems, overpressure protection devices, or other pipeline system components). We recognize that regulated companies need to understand how RSPA will react should such testing result in pipeline safety violations or other compliance problems.

Relationship to Year 2000 Dates

Although the focus of this policy is on testing-related problems that occur prior to January 1, 2000, RSPA notes that with respect to problems occurring after January 1, 2000, we will continue

to recognize good faith efforts and other potentially mitigating factors in determining an appropriate response. In that regard, companies that test and prepare necessary plans in accordance with the terms of this policy are likely to be in a more favorable position to avoid compliance action than companies that do not, should a company not be able to correct all Year 2000-related deficiencies in a timely manner.

Criteria Justifying Application of This Policy

Companies must address potentially adverse conditions on their pipelines. The pipeline safety regulations require procedures to assure safety from adverse, abnormal and emergency operating conditions. RSPA will fully consider a company's preparations if a violation or incident results from a Year 2000 problem and will mitigate any subsequent compliance action if necessary preparations have been taken. However, RSPA will pursue strong enforcement action, including assessing maximum civil penalties, for regulatory violations or other safety problems resulting from a pipeline company not having prepared for potential Year 2000 problems.

As noted above, RSPA will exercise its discretion to forego applicable compliance actions for problems resulting from specific tests, where the company can demonstrate to RSPA that it has satisfied all of the nine (9) applicable criteria below.

- (1) Systematic Design of Testing Protocols. Written testing protocols were
 - (a) designed in advance of the testing period, (b) reflect a good faith effort to

evaluate the company's Year 2000-related safety and environmental compliance status, (c) will not circumvent pipeline safety regulatory compliance, (d) were designed to prevent or limit violations or other compliance problems that may result from such testing (e.g., through adoption or revision of appropriate contingency plans) and (e) include provisions to protect the public, employees and the environment.

(2) Problems Caused By Testing. The specific Year 2000-related testing was the direct cause of the potential compliance problems.

(3) Testing Need, Timing and Length. The specific testing that caused the problem was:

(a) Necessary to determine the effectiveness of specific Year 2000-related modifications or existing operations in ensuring pipeline safety compliance;

(b) Part of a comprehensive testing program designed to correct Year 2000 deficiencies at the facility;

(c) Conducted well in advance of the Year 2000 dates in question (i.e., normally at least 30 days in advance of the dates in question);

- (4) Absence of Harm. Testing problems do not result in substantial environmental damage or serious actual harm to the public;
- (5) Immediate Correction. The company corrected all problems caused by the testing as soon as possible (i.e. normally within 24 hours).
- (6) Expeditious Remediation. The company expeditiously remediated any hazardous liquid release in accordance with the company response plan required by 49 CFR Part 194.
- (7) Reporting. The company has met all applicable reporting requirements including those for releases from a pipeline facility (49 CFR Parts 191 and 195) and safety related condition reports (49 CFR Parts 191 and 195).
- (8) Retesting. Any retesting conducted prior to the Year 2000 dates in question met all the criteria outlined in this policy and included modifications to earlier testing and/or applicable operating conditions that are reasonably designed to achieve compliance.
- (9) Cooperation. The company provides any information RSPA requests as necessary to determine whether to forego compliance action.

Emphasis on Business Continuity and Contingency Planning

Time is running out for solving Year 2000 problems. Some companies may not be able to fully test and remediate all of their mission-critical systems and may face disruptions in their operations. Systems that have been tested and remediated may still encounter unanticipated Year 2000 problems. Despite best efforts of dedicated staff to assess, remediate, validate, and implement mission-critical systems, companies remain vulnerable to disrupted business processes. Because most companies are highly dependent on information technology to carry out their business, Year 2000-induced failures may have a severe impact on their ability to deliver critical services and assure safety. Additionally, the risk of failure is not limited to the company's internal information systems. Many companies depend on information and data provided by business partners such as other pipeline companies, state and local agencies, international suppliers, and private sector entities. Every company depends on key infrastructure services such as power, water, transportation, and telecommunications. Because of these risks, it is important that companies conduct business continuity and contingency planning to reduce the risk of Year 2000 business and facility failures.

Each company should ensure the continuity of core business processes by identifying, assessing, managing, and mitigating its Year 2000 risks. This effort should not be limited to the risks posed by the Year 2000-induced failures of internal information systems, but should include potential Year 2000 failures of others, including business partners and infrastructure service providers.

The business continuity planning process focuses on reducing the risk of Year 2000-induced business and facility failures. It safeguards a company's ability to maintain safety functions and produce a minimum acceptable level of services in the event of failures of critical information systems and services. It also helps to identify alternate resources and processes needed to operate the core business processes. Although it does not offer a long-term solution to Year 2000-induced failures, it will help the company to prepare for a potential crisis, and may facilitate the restoration of normal service at the earliest possible time in the most cost-effective manner.

Cooperation With States

RSPA is strongly encouraging States participating in the pipeline safety program to adopt this or a similar approach to address Year 2000 compliance issues. RSPA is coordinating closely with State agencies concerning Year 2000-related testing issues.

Disclaimer

This policy does not constitute a final Department action. It does not create any rights, duties, obligations, or defenses, implied or otherwise, in any persons or entities. It sets forth factors that RSPA intends to use in the exercise of its compliance discretion, and it is not intended for use in pleading, at hearing, at trial, or in any adjudicatory context.

Specific Compliance Concerns

Individual facility-specific concerns may be directed to the RSPA Office of Pipeline Safety

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CENTRAL REGION

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SOUTHWEST REGION

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